

- ◇ The Department can subpoena records and witnesses if necessary, but prefers to work cooperatively with respondents.

THE PROCESS

Complaint

California law prohibits harassment and discrimination in employment, public accommodations and provision of services, because of race, color, ancestry, national origin, religion, sex, disability (including HIV/AIDS diagnosis) or sexual orientation. In employment, harassment and discrimination are also prohibited on the basis of age (40 or over), marital status, medical condition (cancer and genetic characteristics) or pregnancy. Employment provisions also prohibit denial of medical, family care or pregnancy leave.

Acts of violence or threats of violence because of a person's race, color, religion, ancestry, national origin, age, disability, sex, sexual orientation, political affiliation or position in a labor dispute, or other characteristics such as those listed above, are prohibited by the *Ralph Civil Rights Act*, which is also enforced by the Department.

Service

After a complaint is filed, a copy is served on the party who is alleged to have violated the law (the respondent). The complaint may also be referred to another state or federal agency with concurrent jurisdiction.

A respondent:

- ◇ Has the right to answer the complaint and should provide a response which answers each allegation in the complaint in detail and includes supporting documentary evidence.
- ◇ Must provide the Department with requested data and any additional relevant information regarding the complaint.
- ◇ Must file his/her current address with the Department and notify the Department of any change of address which occurs while the complaint is pending.

No-Fault Settlements

A no-fault settlement provides the opportunity to resolve the complaint without a determination as to its merits. This process allows the parties to:

- ◇ Avoid the administrative and financial burden of a lengthy investigation; and
- ◇ Reduce the monetary liability that can accrue during the period of an investigation.

The assigned consultant should be contacted to explore the possibility of resolving a complaint.

Confidentiality - Offers and counteroffers made in an effort to settle a case, as well as any information disclosed in a formal conciliation, will be held confidential. All other information gathered in the course of an investigation is disclosable.

Investigation

If the complaint is not resolved during the preliminary stages, it will be fully investigated. A Department staff member may need to:

Interview the party against whom the complaint is filed, as well as other witnesses.

- ◇ Have access to pertinent records and documents for review.
- ◇ Make an on-site inspection of facilities and operations.
- ◇ Issue subpoenas or require that witnesses be deposed.

Conciliation

If the complaint is substantiated, a formal conciliation conference may be scheduled with Department staff. Corrective measures to resolve the complaint may require:

- ◇ The previously denied employment or service be made available.
- ◇ Compensation for any losses incurred because of the discrimination.

- ◇ Compensation for the victim's emotional distress.
- ◇ Correction of other harm(s) resulting from the violation(s).
- ◇ Modification of practices that adversely affect persons protected under the law.
- ◇ Other actions to eliminate the effects of discrimination.

The terms of any corrective measures will be formalized in a written agreement. The agreement will become part of the public record unless the parties, including the Department, agree that it will be held confidential.

Prosecution

If the Department determines that the law has been violated and is unable to resolve the complaint through conciliation, the Director may issue an accusation of discrimination. When the Department seeks emotional distress damages, administrative fines, or civil penalties, the respondent may elect to either have the complaint heard by the Fair Employment and Housing Commission or transfer the matter to court.

◆ *Fair Employment and Housing Commission*

If the respondent elects to have the matter heard by the Commission, the Commission will hear testimony under oath, render a decision and issue a legally enforceable order.

In employment cases, the Commission may order remedies for out-of-pocket losses, hiring or reinstatement, damages for emotional distress and administrative fines not to exceed \$150,000 per complainant per respondent and changes in a respondent's policies or practices.

In cases involving hate violence, the Commission may order remedies for out-of-pocket losses and emotional distress damages not to exceed \$150,000, as well as a civil penalty not to exceed \$25,000 which is awarded to the complainant.

The Commission's order may be appealed to or enforced by a Superior Court.

♦ *Court*

If the respondent elects to have the matter transferred to court, the Department will file a lawsuit on behalf of the complainant. Damages in court are unlimited.

Right to Sue

Every complainant who files a charge with the Department has the right to file a private lawsuit. The right is typically waived when the complaint is settled or goes to public hearing. Damages in court are Unlimited.

Complainants who file lawsuits on their own behalf under the *Fair Employment and Housing Act* need to provide the court with a Notice of Right to Sue from the Department. The lawsuit must be filed within one year from the date of the Notice of Right to Sue. A Notice of Right to Sue may be requested at any time during the investigation by the complainant.

If not requested earlier, a Notice of Right to Sue will be automatically issued with the complaint is closed or one year from the date the complaint is filed.

Individuals who wish to file a lawsuit under the *Ralph Act* or *Unruh Civil Rights Act* are not required to file with the Department and do not need a Notice of Right to Sue.



State of California
Department of Fair Employment & Housing
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A Guide for Respondents

The following information has been prepared by the Department of Fair Employment and Housing to assist persons and organizations charged with discrimination (the respondent) under California law in understanding their rights and responsibilities.

Respondents should know that:

- ♦ The complaint has been accepted after a careful screening process. The complaint contains allegations which, if proven, will substantiate a violation of the *Fair Employment and Housing Act*.
- ♦ Acceptance of the complaint does not, however, represent any determination that the law has been violated.
- ♦ The Department's proceedings are administrative, not criminal.
- ♦ During an investigation, the Department's role is that of a neutral fact-finder. The Department represents the State of California, not the complainant.
- ♦ The law prohibits retaliation against a complainant or any individual who provides information to the Department.
- ♦ The law requires employers to maintain all applications, personnel, membership, or employment referral records for a minimum of two years. After a complaint is filed, all such records shall be retained until a determination has been reached and all appeals and proceedings have been terminated.
- ♦ An offer of a remedy to resolve the complaint is appropriate at any time.
- ♦ Throughout the process, they are given the opportunity to ask questions, provide information and suggest witnesses.

**For more information,
contact the Department
toll free at:
(800) 884-1684**

**Sacramento area & out-of-state
(916) 227-0551**

**TTY Number
(800) 700-2320**

**or visit our website at:
www.dfeh.ca.gov**